

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

PHILLIP M. SMITH,)	
)	
Petitioner,)	
)	
v.)	Case Nos. 4:04-cv 60 / 4:02-cr-45
)	<i>Edgar / Lee</i>
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

Petitioner Phillip M. Smith, a federal prisoner, has filed a *pro se* motion for post-conviction relief under 28 U.S.C. § 2255. The United States of America opposes the motion. The Court referred the case to Magistrate Judge Susan K. Lee for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). On December 1, 2006, Magistrate Judge Lee submitted her report and recommendation. [Doc. No. 8]. The parties have not timely filed any objections.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the motion for post-conviction relief brought under 28 U.S.C. § 2255 shall be **DENIED and DISMISSED WITH PREJUDICE**.

Any appeal from this decision by petitioner Smith would be frivolous and not taken in good faith. Any application by petitioner Smith for leave to proceed on appeal *in forma pauperis* shall be denied pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a).

If petitioner Smith files a notice of appeal, it shall be treated as an application for a certificate of appealability which will be denied pursuant to 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b)(1) because he has not made a substantial showing of the denial of a constitutional right.

A separate judgment will be entered.

SO ORDERED.

ENTER this the 16th day January, 2007.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE